IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2377 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PUNJAJI GOPALJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

MR UM SHASTRI for Petitioner

MS NANDINI JOSHI, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.C.PATEL

Date of decision: 14/09/2000

ORAL JUDGEMENT

By means of filing this petition under Article

226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ or order, directing the respondents to hand over the possession of whole revenue survey No.28, admeasuring 1 Hector, 01 Are 17 square meters of village Dhola Kuva, Taluka & Dist : Gandhinagar to the petitioner. The petitioner has further prayed to direct the respondents to acquire land of the petitioner bearing revenue survey No.28, admeasuring 1 Hector 01 Are 17 square meters, situated in village Dhola Kuva, Taluka & Dist : Gandhinagar, after following procedure of law as prescribed under the Land Acquisition Act,1894, ("the Act" for short) and to direct the respondents to pay to the petitioner compensation for damage caused to the said land along with compensation to be awarded under the Act for acquisition of land at the prevailing market rate.

2. The forefathers of the petitioners were owners of land bearing revenue survey No.28, admeasuring 1 Hector 01 are 17 sq. mts, situated at village Dhola Kuva, Taluka & Dist : Gandhinagar. In the year 1966, the said land was acquired by the State Government for the purpose of development of Gandhinagar as capital of State of Gujarat. The possession of the land was taken from the petitioner on February 10, 1966 and an amount of Rs.4,990/- was paid to the petitioner as compensation payable to him under the provisions of the Act. The petitioner has averred in the petition that the respondents had realized that the land in question was not required for the purpose for which it was acquired and, therefore, by a notification dated December, 23, 1969, which was issued by the Revenue Department of the State Government, the land was released from acquisition. According to the petitioner, in view of the notification dated December 23, 1969, the District Inspector, Land Records, Gandhinagar, had issued a letter dated December 19, 1971, informing the authority concerned to effect change in the record of rights and mutation entry was made on February 8, 1993, by Talati-cum-Mantri, Dhola Kuva, Tal.& Dist : Gandhinagar, in village records entering the name of the petitioner as owner of the land in question. The petitioner has asserted in the petitioner that thereafter the petitioner was put into possession of the land on July 19, 1993. A copy of the village form No.6 is produced by the petitioner at Annexure "A" to the petition to substantiate his say that in village records his name was entered as owner of the land in question. The case pleaded by the petitioner in the petition is that at the time of taking possession of the land in question it was found that land admeasuring 0-00 Hector 50 Are was in possession of the Gujarat Fun

World which had put up fencing on the said land and, therefore, the petitioner had requested the office bearers of Gujarat Fun World to hand over possession of the said land to the petitioner, but he was informed that the land in question was handed over to Gujarat Fun World by the State of Gujarat and the petitioner has no right to evict the Gujarat Fun World from the said land. It is mentioned in the petition that in view of this dispute, the petitioner had given an application dated November 8, 1995, to the District Surveyor, Gandhinagar with a request to survey the land in question and the petitioner had also paid necessary fees on November 1, 1995, but the petitioner was informed on November 1, 1995, that the possession of the land was already handed over to him and there was no need to carry out fresh survey of land in question. The petitioner has stated that the Gujarat Fun World is not permitting the petitioner and his family members to enter into the said land which is owned by the petitioner and in fact, the petitioner is handed over the possession of the land admeasuring 0 Hector 51 Are and 17 square meters of land, whereas rest of the land is in possession of the Gujarat Fun World. The petitioner has claimed that in order to get possession of the land, the petitioner has filed Regular Civil Suit No.370 of 1996 in the Court of learned Civil Judge (S.D.) at Gandhinagar against Gujarat Fun World which is pending. What is mentioned in the petition is that the petitioner has recently come to know that the respondent Nos. 2 and 3 have, without following due procedure of law used the land of the petitioner for the purpose of developing road near Indroda bridge, constructed on Sabarmati river and though the petitioner had filed objections against the said use of the land, no reply was given by the respondents. The petitioner has claimed that therefore, a registered notice was issued stating inter-alia that the petitioner is owner of the land in question and without following due procedure of law as prescribed under the Act and without awarding any compensation towards the acquisition of the land at the prevailing market rate, the respondents have no right to take possession of the land in question nor right to use the same for developing the road. The grievance made by the petitioner is that inspite of service of notice, the respondents have continued the work of construction of road which is contrary to the provisions of law. Under the circumstances, the petitioner has filed the present petition and claimed reliefs to which reference is made earlier.

3. Mr. Babubhai B. Patel, Deputy Executive Engineer, Capital Project, Sub Division No.12,

Gandhinagar, has filed affidavit in reply on behalf of the respondent No.2 controverting the averments made in the petition. In the reply it is stated that as the possession of the disputed land was taken from the petitioner on February 10, 1966 after following the procedure laid down under the Act and compensation of Rs.4,990/- was also paid to the petitioner, the petitioner is not entitled to the reliefs claimed in the petition. In the reply it is explained that till today the possession of the land bearing revenue survey No.28 is with the Government Capital Project, Division No.2 and the possession of the land was never given to the petitioner at any point of time. The claim advanced by the petitioner that disputed land was not required for the purpose for which it was acquired and hence possession of the land was handed over to him is controverted and it is stated that possession of the land acquired was never handed over to the petitioner. Referring to village form No.6 it is stated in the reply that entry made by the Talati-cum-Mantri without getting the original order of Mamlatdar is of doubtful character and at no point of time the order of the Mamlatdar transferring the disputed land to the petitioner was served on the department concerned by the Revenue Department. After asserting that the possession of the disputed land was never handed over to the petitioner by the Executive Engineer, Capital Project, Division No.2, what is maintained is that there is no wire fencing surrounding the land and the question of demolishing wire fencing by the respondents does not arise. According to the averments made in the reply, the Government has decided to construct the approach road from bridge to National Highway No. 8-C which passes through the disputed land which was already acquired in the year 1966 and before construction of the approach road, the Government authorities i.e. Executive Engineer, Capital Project, Division NO.2, Chief Town Planner, Gandhinagar and Inspector of D.I.L.R. had visited the site which was acquired in the year 1966 after which construction of the road was started. What is stressed in the reply is that as the land was already acquired previously, no direction can be given to the respondents to acquire it again and, therefore, the petition should be dismissed.

4. The petitioner has filed an affidavit in rejoinder on September 7, 2000, wherein it is maintained that the State Government has without following procedure prescribed under the Act has taken the possession of the land which is illegal. In the rejoinder it is stated by the petitioner that land of the petitioner was never acquired after following the procedure prescribed under

the Act nor was the petitioner paid any compensation and the petitioner requested the Court to call upon the respondents to produce documents before the Court such as (1) notification under Section 4 of the Act, (2) notice under Section 5 (a) of the Act, (3) declaration under Section 6 of the Act, (4) notice under Section 9 of the Act and (5) award made by the Special Land Acquisition Officer under Section 11 of the Act. In the rejoinder also the petitioner has maintained that in the year 1993, the possession of the land in question was handed over to him and thereafter illegal use is being made by the respondents without acquiring the same. By filing rejoinder, the petitioner has maintained that he is entitled to reliefs claimed in the petition.

5. We have heard learned counsel for the parties and taken into consideration the documents forming part of petition. The submission that land belonging to the petitioner was acquired in the year 1966 without following the procedure prescribed under the Act and without payment of compensation has no substance. In paragraph 2 of the petition itself, the petitioner has stated that his land was acquired for the purpose of development of Gandhinagar as capital of State of Gujarat pursuant to publication of notification under Section 4 (1) of the Act in the official gazette and that possession of the land in question was taken from the petitioner on September 7, 1966. In the petition no grievance was made by the petitioner that he was not paid any compensation when his land was acquired for capital project. Such a plea is raised only in rejoinder after filing of affidavit in reply by Mr. B.B.Patel, Deputy Executive Engineer, Capital Project, wherein it is stated that the petitioner was paid an amount of Rs.4,990/- as compensation under the Act. The grievance made by the petitioner that he was never paid compensation for his land which was acquired for Gandhinagar Capital Project is illusory and cannot be entertained after a period of 34 years. The prayer made by the petitioner to call upon the respondents to produce certain documents such as notification under Section 4 of the Act or declaration under Section 6 of the Act or award made by the Land Acquisition Officer under Section 11 of the Act also cannot be entertained at this late stage and such fishing inquiry cannot be made for the petitioner in a petition filed under Article 226 of the Constitution of India. A judicial notice of the fact can be taken that in every department of the Government the record is required to be destroyed after particular time and, therefore, it would be wholly unreasonable to call upon respondents to produce those documents before the Court at such belated

stage. The basis of the petition is that the petitioner was again handed over the possession of the land in the year 1993 by the respondents as it was realized that the land in question was no more required for capital project. For this purpose, the petitioner has referred to notification dated December, 23, 1969, purportedly issued by Revenue Department of the State Government but, the petitioner has not produced the copy of the notification on the record of the petition. Learned counsel for the respondents has produced a copy of the resolution dated December, 23, 1969, for the perusal of the Court which relates to reconstitution of Gandhinagar Taluka. There is nothing on the record of the petition to show that by notification dated December, 23, 1969, the State Government had withdrawn from acquisition in question. It is relevant to notice that even as per the petitioner, possession of the land acquired was taken from him on September 7, 1966. Once the possession of the land acquired is taken, the land vests absolutely in the Government free from all encumbrances and thereafter power to withdraw from acquisition under Section 48 of the Act is not available to the Government. It is well settled that once the possession of the land acquired is taken, the Government is not at liberty to withdraw from the acquisition and it is not even the case of the Government that it had withdrawn from the acquisition of land in question at any point of time after possession of the same was taken from the petitioner. Therefore, the say of the petitioner that by notification dated December 23, 1969 the Government had decided to withdraw from acquisition, does not inspire confidence and cannot be accepted. Normally when the land is not required for the purpose for which it is acquired and is restored to the original owner, the owner will have to pay price of the land or in any view of the matter will have to repay amount of compensation. It is not the case of the petitioner that he had either paid price of the land restored or redeposited amount of compensation. Moreover, the petitioner has not produced any document to show that after the issuance of so-called notification dated December 23, 1969, he was handed over the possession of the land in question by the competent authority. The reliance placed by the petitioner on village form No. 6 to show that he is owner and in possession of the land in question is totally misplaced. In this regard the averments made by the Deputy Executive Engineer in paragraph 8 of the reply cannot be ignored. The record shows that the Talati-cum-Mantri had made an entry in village form No.6 without obtaining or perusing original order of the Mamlatdar and the said entry is of doubtful nature. Even otherwise such entries have only

fiscal value and the entry relied on by the petitioner does not confer or create title in his favour. Once it is found that the petitioner was never handed over possession of the land acquired, it becomes at once clear that the petitioner is not entitled to any of the reliefs claimed in the petition. In absence of any cogent and reliable evidence produced by the petitioner, the assertion made in the reply affidavit that the possession of the land is with the Government Capital Project, Division No.2 has got to be accepted As stated in the affidavit in reply, the possession of the land acquired was never handed over to the petitioner and, therefore, the respondents are entitled to use the land for public purpose. Use of the land for construction of road cannot be regarded as illegal more particularly when the disputed land was never handed over to the petitioner after its acquisition. Under the circumstances, we are of the opinion that the petition has no merits and is liable to be rejected.

6. For the foregoing reasons, the petition fails and is dismissed. Rule is discharged with costs.

7. The office is directed to send a copy of this judgment to the Court of learned Civil Judge (S.D.), Gandhinagar, before whom Regular Civil Suit No.370/96 filed by the petitioner is pending, for necessary information.

14-9-2000 (J.M.Panchal, J.) (M.C.Patel, J.)

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